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HAROLD S. WILLEY, Clerk

IN THE
Supreme Court of the United States
October Term, 1952

No. ~~371~~ 7

GAYNOR NEWS CO., INC.,

VS.

NATIONAL LABOR RELATIONS BOARD.

**MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE**

THURGOOD MARSHALL,
JACK GREENBERG,
*Counsel for the N.A.A.C.P. Legal
Defense and Educational Fund, Inc.*

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*To the Honorable, the Chief Justice and the
Associate Justices of the Supreme Court
of the United States:*

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., pursuant to Rule 27 of the Rules of the Supreme Court of the United States makes a motion for leave to file a brief as *amicus curiae* in the case of *Gaynor News Co., Inc. v. National Labor Relations Board*, No. 371 in this Court.

1. Consent to file such brief has been requested of the parties. The National Labor Relations Board granted consent. Gaynor News Co., Inc. refused consent. Letters of the parties granting and refusing consent are filed herewith in the office of the Clerk.

2. Movant is an organization engaged in combatting racial discrimination against Negroes. Although it does

not appear that racial discrimination is involved in this case, certain legal principles may be determined here and were determined in the court below, and before the National Labor Relations Board, which immediately affect the rights of Negroes and other minorities in their quest for equal employment opportunity.

Petitioner's position is that no violation of § 8 (a)(3) of the National Labor Relations Act, as amended, exists where the employer favors union workers in pay and other privileges over non-union workers, where the union is a closed union, because in such a situation, non-members cannot be "encouraged" by the discrimination. The Court below rejected this contention.

In many situations in which a labor union is the collective bargaining agent, Negroes and other minority groups are excluded from union membership solely because of race, religion, or national origin. Where Negroes or members of other minorities are barred from union membership, under petitioner's legal theory, the practice of withholding benefits from non-union members is not an unfair labor practice of § 8(a)(3) of the Act, because the differential treatment cannot "encourage" their membership. If this theory prevails, minority group members barred from the union, and denied benefits given union members, will be deprived of the right to file an unfair labor practice charge under § 8(a)(3) before the National Labor Relations Board, which is especially skilled in investigating such charges and enforcing the Act. A decision in this case, therefore, will vitally affect the struggle of large segments of our population to secure job equality and will be of national importance.

3. Movant has not seen the briefs of the parties in this Court and it is of the opinion that these have not yet been submitted. However, it does not believe that facts bearing upon the status of Negro and other minority group workers

will be adequately presented. Movant does not believe that the effect of the practices involved in this case upon minority group workers in encouraging them to secure membership in labor unions, will be adequately presented. Movant submits that these considerations are relevant to the public policy of the United States as it bears upon this case.

4. Movant does not believe that the law concerning the effect of national public policy upon the construction of the ambiguous statutory language of § 8(a)(3) will be adequately presented; for example: the public policy of the United States against racial discrimination and the public policy of the United States relating to the full and efficient utilization of available manpower; nor that the policy of the statute (for example: insofar as it seeks to protect non-union members from practices inimical to the general welfare) will be adequately dealt with in terms of the problems of minority group members posed by this case.

Movant does not intend to file a brief covering matters adequately dealt with by the parties.

5. Movant submits that the above considerations are relevant to the issues at the bar and to the particular holding which may emanate from this Court.

Wherefore movant moves for leave to file a brief herein as *amicus curiae*.

Respectfully submitted,

THURGOOD MARSHALL,
JACK GREENBERG,
*Counsel for the N.A.A.C.P. Legal
Defense and Educational Fund, Inc.*